

## Department of the Army, DoD

## § 552.33

Army other than for the production of materiel, munitions, or supplies.

(f) *Industrial installation.* Any unit of real property under control of the Department of the Army (including structures on land owned by or leased to the United States, substantially equipped with production utilities and maintenance machinery, tools, equipment, and including housing and other supporting facilities built as an integral part of the installation) designed for the production of equipment, supplies, or materials for military use; or for the processing, production, or manufacturing of components of such items.

(g) *Lease.* A lease is a conveyance of an interest in real estate for a term of years, revocable at will, or as otherwise provided in the instrument in consideration of a return of rent.

(h) *License.* A license is a bare authority to do a specified act or acts upon the land of the licensor without possessing or acquiring any estate therein.

(i) *Easement.* An easement is a conveyance of an interest in real estate for the purpose or purposes specified in the grant.

### § 552.32 Authority to acquire real estate and interests therein.

While the Federal Government has the inherent power to acquire land for its constitutional purposes, this power can be exercised only at the discretion of Congress (*Van Brocklin v. Tennessee*, 117 U.S. 151; 29 L. Ed. 845; 6 S. Ct. 670). No land shall be purchased on account of the United States, except under a law authorizing such purchase (R. S. 3736; 41 U.S.C. 14). No real estate not in Federal ownership shall be acquired by a military department, except as such acquisition is or shall be expressly authorized by law (section 501(b), Act July 27, 1954; Pub. L. 534, 83d Congress; 68 Stat. 560).

### § 552.33 Estates and methods of acquisition.

(a) Title to non-Government-owned real estate will be by purchase, condemnation, donation (when the authorization act specifies donation), and exchange (when the authorization act specifies exchange).

(b) Easements in non-Government-owned real estate are the same as in paragraph (a) of this section.

(c) Licenses in non-Government-owned real estate are generally by donation, although a nonrevocable license might be acquired by purchase.

(d) Leaseholds in non-Government-owned real estate will be by negotiation or condemnation. Leaseholds may give the Government exclusive use or may give the Government co-use with the owner for specific purposes.

(e) Jurisdiction over Government-owned real estate will be by transfer, reassignment, withdrawal, and reservation.

(f) Permits to use Government-owned real estate will be by instrument issued by another Government department or agency. Although in the nature of a license (may be revocable or nonrevocable), the instrument is designated as a "permit", since it relates to Government-owned real estate, to distinguish it from a "license" relating to non-Government-owned real estate.

(g) Recapture of use of former Government-owned real estate which was disposed of subject to a "National Security Clause," a "National Emergency Clause," or a similar provision will be by letter from the Chief of Engineers to the owner of the property, based upon a directive from the Secretary of the Army or his designee.

(h) Revestment of title to former Government-owned real estate which was disposed of subject to a reverter provision, such as a "National Defense Purpose Clause" will be by letter to the owner by the official of the department designated in the conveyance by the Government.

(i) Procurement of options on real estate which is "suitable and likely to be required" in connection with a military public works project, prior to express authorization by law for the acquisition of said real estate will be by negotiation.

(j) Extinguishment of third party interests in lands owned or controlled by the United States, such as outstanding oil, gas, and other mineral rights; grazing rights; timber rights; water rights; and easements for rights-of-way for highways, railroads, power lines, communication lines, water lines, and

sewer lines will be the same as prescribed in paragraph (a) of this section. Payment for extinguishment of grazing rights or licenses on public domain or other property owned by or under the control of the United States is made pursuant to Act July 9, 1942; 56 Stat. 654; as amended by Act May 28, 1948; 62 Stat. 277; and as further amended by Act October 29, 1949; 63 Stat. 996 (43 U.S.C. 315q and r).

**§ 552.34 Policies relative to new acquisition.**

(a) *Present holdings inadequate for essential mission.* No request to acquire real estate by transfer from Navy or Air Force or from another Government agency, or by purchase, lease or condemnation will be considered or approved unless it is established that:

(1) The activity to be accommodated is essential to an assigned mission.

(2) Real property under the control of the Army is inadequate to satisfy these requirements.

(3) No real property under the control of the Navy or Air Force or other Federal agencies is suitable and available for use by the Army on a permit or joint use basis.

(b) *Order of priority for method of acquisition.* If the activity qualifies as essential to an assigned mission but the need cannot be filled by the use of other Army property or other Federal property on a permit or joint use basis, the following alternatives will be considered in the order listed:

(1) Donation or long-term nominal rental lease.

(2) Transfer from Navy or Air Force. Acquisition of lands excess to the requirements of other military departments.

(3) Recapture of use.

(4) Public Domain. Withdrawal from the public domain for military use. (Pub. L. 85-337, Feb. 28, 1958 (72 Stat. 28) requires that an Act of Congress be obtained to withdraw, reserve, or restrict for defense purposes more than 5,000 acres of the public domain.)

(5) Acquisition by exchange. Exercise of existing authorities for the exchange of Government-owned real property for non-Government-owned real property that is by type or location adaptable to the military need.

(6) Transfer from other Federal agencies. Acquisition of lands excess to the requirement of Federal agencies other than military departments.

(7) Acquisition by purchase, lease or condemnation.

(c) *Current requirements given preference.* In considering the use of Army real property by another military department, current requirements will, in the absence of unusual circumstances, be given preference over future needs and mobilization requirements. If the current requirement will not continue through mobilization, care must be exercised to avoid modification of the property in a manner that would prevent its timely return to the holding department to meet the mobilization requirement. If it is contemplated that the current requirement will continue through mobilization, the property may be modified as required and the mobilization plans of the military departments concerned should be changed accordingly.

(d) *Firm requirements and minimum acquisition.* Requirements in each individual case will be firmly determined and only the minimum amount of property necessary will be acquired.

(e) *Factors considered insufficient justification for acquisition by lease.* Desirability of location in an urban area, reduced travel time for employees or business representatives, nominal savings in transportation costs, environmental considerations (such as noise or traffic), or desirability of single unit offices instead of split locations in close proximity will not be considered sufficient justification for acquiring leased space or facilities when Government-owned property is available. For exceptions, see paragraph (f) of this section.

(f) *Special location considerations.* Acquisition of title or a leasehold interest in real property may be justified where it is demonstrated that the function to be accommodated is an essential activity and the geographic location thereof in other than Government-owned space is vital to the accomplishment of the assigned mission. Examples that may fall in this group are recruiting stations (exclusive of kindred examining and induction units), airbases, air defense sites, and sites for construction